

**MONTANA TWENTY SECOND JUDICIAL DISTRICT
COURT RULES**

BIG HORN, CARBON, AND STILLWATER COUNTIES

HONORABLE BLAIR JONES

District Judge

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EFFECTIVE: July 1, 2003

PREFACE

The following Rules of Practice supplement the Uniform District Court Rules (UDCR) and the Montana Rules of Civil Procedure (M.R.Civ.P.) and any conflict shall be controlled by the Montana Rules of Civil Procedure and/or the Uniform District Court Rules.

RULE 1 - ASSIGNMENT OF CASES

The District Court of the Twenty Second Judicial District has assumed full jurisdiction of all cases on file with the Twenty Second Judicial District in Big Horn, Carbon, and Stillwater Counties as of January 1, 2000, except for those cases which the Court elects to transfer to outside Courts where grounds for judicial disqualification exist or those in which the presiding Court is disqualified by one of the parties thereto within the time allowed by law. In addition, the Court may assign existing cases to outside Courts in those cases where such assignment is warranted in the interest of judicial economy.

RULE 2 - LAW AND MOTION

Day and Time. To conduct routine matters, reasonable effort will be made to schedule two law and motion dates monthly in each County. Consult the Clerk of Court for each County to determine Law and Motion on any given day. Scheduled law and motion will begin at 9:30 o'clock a.m. Scheduled law and motion may continue on any designated date at the discretion of the Court. Additional law and motion dates may be held in any County when, in the discretion of the Court, the business of the district so requires.

Routine Matters. "Routine matters" for purpose of law and motion shall include initial appearance, arraignment, judgment by consent or default, probate proceedings, uncontested ex parte matters, matters pertaining to questions of law only and any other matter reasonably anticipated to take less than 30 minutes to complete. Matters set for a law and motion date which become contested are subject to postponement and rescheduling.

Open Court. All matters presented to the Court shall be heard in open Court, except for *adoption hearings* (§40-8-126, MCA,) hearings and trials under the *Uniform Parentage Act* (§§40-6-111 and 40-6-120, MCA,) and such other matters required by law to be closed or allowed to be closed in the interests of justice.

Calendar Preparation. Counsel shall notify the Clerk of District Court in the appropriate County by 12:00 p.m. on the preceding business day of matters to be placed on the law and motion calendar. The matters addressed by the Court shall be listed by the Clerk of Court on a law and motion calendar, copies of which shall be made available to

counsel in the Clerk's office. Emergency matters may be presented to the Court at any time upon adequate showing by the moving party. Parties or counsel not prepared as their cause is called from the calendar will be moved to end of the calendar and be heard subject to available time.

Contested Matters. Unless scheduled by the Judge, contested matters, matters involving questions of fact, or matters requiring more than thirty (30) minutes for presentation shall be scheduled through the Court's Administrator at (406) 322-5406.

Document Presentation. No matter may be placed on the law and motion calendar until the motion or other documentation and all relevant supporting documents have been filed with the Clerk of Court.

Ex Parte Matters. *Ex parte* motions are not favored. Emergency matters requiring the Court's attention may be mailed or delivered to the Court with a request for the court's immediate attention. No *ex parte* matter will be considered if the opposing party is represented by counsel or if the opposing party's location is known but the party has not been served.

RULE 3 - SUBSTITUTION OF JUDGE

Substitution of Judge is governed by §3-1-804, MCA. All motions for the substitution of Judge shall be accompanied by the required filing fee at the time of filing, otherwise the motion shall be stricken.

When an outside judge has been called in, it shall be the duty of plaintiff's counsel, reasonably in advance of any proceedings to be taken therein, to notify the local judge and with his assistance make arrangements for all personnel and facilities necessary to accommodate the needs of the case and the outside judge.

Nothing herein shall prohibit the judge from calling in an outside judge to take jurisdiction of a case, pursuant to §3-5-111, MCA.

RULE 4 - MOTIONS--BRIEFS--EXTENSION--PRESENTATION

Motions shall be governed by Rule 2, Uniform District Court Rules, except motions made pursuant to Rules 52, 56, 59, and 60 of the M.R.Civ.P., which shall be noticed for hearing by the moving party in accordance with the provisions of said Rules. All motions shall be identified in the title of the pleading with the applicable rule number of the Montana Rules of Civil Procedure.

Upon representation to the Court by the moving party that opposing counsel was notified and does not object to the motion, the Court may sign the order.

Counsel shall include with their motion a proposed Order granting oral argument if such is desired. In the event the Court determines that oral argument would be beneficial to ruling on a motion and orders oral argument, the moving party has the duty to obtain a hearing date and schedule such argument with the Court. The proposed Order

granting oral argument shall include the date and time of argument or blanks for the Court to fill in the date and time.

Counsel shall include with all motions a proposed Order for the Court's signature.

Scheduled hearings on motions pending may be continued by the Court, on its own initiative, or upon the written motion of any party, with prior notice to all parties.

RULE 5 - SERVICE OF PROCESS AND PAPERS

Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof exists as prescribed in the M.R.Civ.P. or other applicable statutes, shall be filed with the Clerk of Court promptly and, in any event, before any action is to be taken thereon by the Court or the parties. Proper service does not include placing copies in counsel's "box" in the Clerk and Recorder's office unless prior permission is obtained from counsel.

RULE 6 - SCHEDULING--CONFERENCES--ORDERS--DISCOVERY RULES

When a case is at issue and all parties have been served and have answered, upon the request of a party or on the Court's initiative, the Court Administrator will calendar a Scheduling Conference. After such conference, the Court will issue a Scheduling Order.

Pursuant to Rule 16(b), M.R.Civ.P., the following matters are exempt from the scheduling procedure required by this Rule:

- (1) Youth Court cases
- (2) URESA actions
- (3) Abstracts of Judgement and Transcripts of Judgment
- (4) Adoptions
- (5) Insanity hearings
- (6) Probate Cases
- (7) Small Claims appeals
- (8) Administrative appeals
- (9) Seizures and Forfeitures
- (10) Name Change Cases
- (11) Habeas Corpus and Post Conviction Relief
- (12) Criminal Cases
- (13) Abused or Neglect proceedings
- (14) Emancipation
- (15) Any other case for which good cause is shown and the Court so

orders.

Pursuant to Rule 26, M.R.Civ.P., the following discovery rules shall be followed in every cause not exempted above, except Domestic Relations Cases and those cases wherein good cause is shown by motion and affidavit:

- (I) Except with leave of Court, a party may not seek discovery from any

source before making an appropriate pre-discovery disclosure and may not seek discovery from another party before serving that party with an appropriate disclosure. A party may serve written interrogatories upon a party simultaneously with service of the required disclosure statement upon that party. Every party shall serve and file an appropriate disclosure not later than fifteen days in advance of the Case Scheduling Conference. The disclosure shall contain the following information:

- (a) the factual basis of every claim or defense advances by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense;
- (b) the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations or pertinent legal or case authorities;
- (c) the name, and if known, the address and telephone number of each individual known or believed to have discoverable information about the claims or defenses, and a summary of that information;
- (d) a copy of, or a description, including the location and custodian, of documents or data compilations, and tangible things and relevant documents reasonable likely to bear on the claims or defenses;
- (e) a computation of any damages claimed; and
- (f) the substance of any insurance agreement that may cover any resulting judgement.

(2) **Supplementation of Disclosure.** The disclosure obligation is reciprocal and continues throughout the case. A party who has made a pre-discovery disclosure is under a duty to supplement or correct the disclosure within a reasonable time if the party learns that the information disclosed is not complete and correct or is no longer complete and correct.

(3) **Signing of Disclosure.** Every mandatory disclosure or supplement made by a party represented by counsel shall be signed by at least one attorney of record. A party who is not represented by counsel shall sign the disclosure. The signature of counsel or the party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after the reasonable inquiry, the disclosure is complete as of the time it was made.

(4) **Sanctions.** A sanction may be imposed for violation of Rule 5. A sanction for violation of the Rule shall be imposed in accordance with Rule 37, M.R.Civ.P.

RULE 7 - COMMUNICATIONS WITH THE COURT

A. **Communications.** All communications with the Court shall go through the District Court Administrator or the Clerk of Court to ensure that no ex parte communications take place and to ensure judicial economy. The Court will not receive letters or other communication from counsel or parties which do not indicate on their face that copies have been sent to opposing counsel.

B. **Ex Parte Communications.** There will be no ex parte discussion with the Court of substantive issues involved in pending or anticipated cases without the presence of or notice to all opposing counsel, or without prior approval or stipulation by such counsel. A violation of this rule may result in the imposition of sanctions against the offending attorney or party.

C. **Reminders to the Court.** In the event the Court has under advisement any matter (including but not limited to motion or decision in a bench trial) for a period of more than ninety **(90)** days, each party affected thereby is encouraged to send to the Court a reminder letter particularly describing the matter under advisement and stating the date the matter was taken under advisement.

RULE 8 - COURT RECORDS

The Clerk of Court of each county is the custodian of the files of the Court for such county. The Clerk may allow papers to be taken from the Clerk's office in accordance with the rules of court and appropriate statutes provided that no will, bond, deposition, exhibit or undertaking shall be taken from the Clerk's office under any circumstances, and no judgment before it is recorded, except by order if the court in writing. Nothing shall be removed from the files in criminal actions before trial without a written order from the judge.

No file shall be taken from the office of the Clerk of Court in any county without the consent of the Clerk and without a receipt therefor acknowledged in writing by the party taking the same provided, however, that no record or paper belonging to a file shall be taken from the custody of the Clerk for a period of twenty-four **(24)** consecutive hours of a working day after its initial filing except by permission of the judge of the Court.

RULE 9 - DISMISSAL FOR FAILURE TO PROSECUTE

When no proceedings have been taken in any civil cause for a period of one year, the action will be dismissed on its merits and/or the file closed by the Court on its own motion after ten **(10)** days notice of such intended dismissal unless good cause to the contrary is shown.

Any party that intends to show cause that an action should not be dismissed or the file closed will give notice of his/her reasons for opposing the dismissal to any other party.

Within ten (10) days of such notice, any other party may file his objection and notice the matter for hearing. The Clerk shall give notice to the attorneys of record or the parties when an action is dismissed pursuant to this rule.

The Clerk shall notify the attorney of record ninety (90) days before the expiration of two (2) years from the filing of an estate matter that it has not been completed and that fact will be brought to the attention of the Court in ninety (90) days for such action as may be appropriate.

RULE 10 - FILINGS

A. **Filing Fees.** All pleadings, motions, and briefs shall be filed with the Clerk of Court. The Clerk of Court shall not accept or file any document required to be accompanied by a filing fee, unless the fee is paid or the Court has approved a fee waiver in writing.

B. **Proposed Pleadings.** Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or any other pleading requiring leave of Court to file, the movant shall file with the motion, a copy of the proposed pleading or amendment and lodge the original with the Clerk of Court. If leave to file is granted, the Clerk of Court shall file the original forthwith.

C. **Discovery.** Pursuant to Rule 4, UDCR, no discovery documents shall be filed with the Clerk of Court without prior leave of Court. Upon receipt of a deposition, the Clerk of Court shall mark it received and place it in the court file.

D. **Jury Demands.** When a demand for a jury trial is incorporated in a pleading, parties shall so indicate in the title as well as the body of the pleading.

E. **Striking Pleadings.** Any papers filed which do not conform to Rule 10 or 11, M.R.Civ.P., may be stricken by the Court, on its own initiative and upon such terms as to the Court may appear just.

F. **Orders.** When any written order or judgement is made by the Court, it must immediately thereafter be presented to the Clerk for filing.

G. **Brief Deadlines.** All briefs required by rule, statute, or Court order to be filed by a date certain shall be filed by 5:00 p.m. by the date certain. Except where approval from the Court is obtained prior to the date certain, and notice thereof is provided to each party by the party seeking an extension of time, filing beyond the date certain may result in the Court's disregarding the brief and citing the delinquent party's attorney for contempt.

H. **Length of Briefs.** No brief shall exceed 20 pages in length, exclusive of indices and appendices, without prior leave of the Court.

I. **Citations in Briefs.** Briefs citing precedents not found in the 22nd Judicial District Law Libraries must be accompanied by complete photocopies of all cases referred to therein.

RULE 11 - SETTLEMENT CONFERENCES OR MEDIATION

A. **Settlement Conference Required.** In each civil case subject to a Scheduling Order pursuant to Local Rule 6, a master-supervised Settlement Conference is required before a case may be tried, unless a stipulation executed by all counsel of record and any unrepresented party is filed with and approved by the Court waiving a Settlement Conference. The Settlement Conference shall be addressed in the Scheduling Order prepared and issued in accordance with Local Rule 6. The purposes of such conferences are to: (1) facilitate (but not coerce) settlement; (2) lessen congestion of the trial calendar; and (3) reduce the cost of litigation by providing a means to resolve contested cases prior to final trial preparation.

A mediation conducted by a trained mediator may be substituted for a Master-supervised Settlement Conference upon agreement of the parties, or by order of the Court. The Clerk of District Court shall maintain a list of Court-approved Settlement Masters and Mediators.

B. **Master-Supervised Settlement Conference.** The Master-supervised Settlement Conference may be held at any time upon stipulation of the parties or order of the Court. Unless otherwise agreed, the conference shall be held after the close of discovery and rulings on pretrial motions but prior to submission of the Pretrial Order. The Court shall issue a separate order confirming the appointment of a Settlement Master and providing for their compensation and the procedures to be followed at the Settlement Conference. Fees for indigent litigants may be waived when the Court has approved an Affidavit of Inability to Pay Filing Fees.

Counsel who will try the case and all parties shall attend in person. Out-of-area corporations or insurance companies shall have a representative present via speaker phone, unless personal attendance is ordered by the Court upon showing of good cause. All participants must have requisite settlement authority. The parties shall agree upon responsibility for the payment of the fees charged by the Settlement Master.

C. **Report of the Settlement Master.** Within five (5) days of the completion of the Master-supervised Settlement Conference, the Settlement Master shall submit a report indicating that the conference was held and describing the issues that were settled, if any. The report shall be filed with copies to the Court, all counsel of record, and any parties not represented by counsel. In the event that the case is not fully settled, the report shall also state the following information obtained from counsel for the parties and any unrepresented party:

- (1) the length of time anticipated to be necessary for trial;
- (2) dates counsel or key witnesses are legitimately unavailable for trial;

- (3) any special requests or needs regarding trial scheduling; and
 - (4) whether there is still a reasonable prospect for settlement.
- Cases will be set for trial upon submission of the Settlement Master's report.

D. **Proceedings Confidential.** No person present at a Settlement Conference, including the Settlement Master, shall be subject to examination concerning statements made by any person at the Settlement Conference. The parties will not subpoena nor otherwise require the Settlement Master to testify regarding the Settlement Conference or the Settlement Master's opinions regarding the case.

RULE 12 - TRIALS

A. **Trial Settings.** Non-Jury trials shall be scheduled by the Court throughout the year as time is available. Jury trials shall be held throughout the year on a schedule to be provided by the Court.

B. **Jury Instructions.** Proposed instructions to the jury In a civil action shall be presented to the Court and served upon each adverse party as stated in the jury trial preparation order. The original and one copy of each instruction proposed must be furnished to the Court. The Court's working copy of each instruction shall indicate the party on whose behalf it is requested, be numbered consecutively, and on an attached page, contain reference to the source thereof, and a citation of authority, if any, supporting the statement of law therein. The Court may receive additional proposed instructions relating to questions arising during the trial at any time prior to completion of settlement of jury instructions. Proposed forms of verdict must be submitted by each party at the same time and in the same manner as the jury instructions. The Court requests that, where possible, a 3 ½-inch computer disk compatible with WordPerfect 6.1 containing the proposed jury instructions accompany the instructions. The disk will not be returned after the trial.

RULE 13 - POSTPONEMENT OF TRIALS

A. **Absence of Witness or Evidence.** Pursuant to Section 25-4-201, MCA, a motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing: (1) the nature and materiality of the expected testimony or evidence; (2) that diligent effort was timely made to secure the witness or the evidence; and (3) that reasonable grounds exist for the production of the witness or evidence if postponement or continuance s granted. If the testimony or the evidence would be admissible upon the trial and the adverse party stipulate that it shall be considered as actually given on the trial, there shall be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

B. **Late Continuances.** If any action set for a jury trial is continued within 96 hours of the trial date the Court may require the moving party to reimburse the Clerk of Court for any expenditures incurred by the Clerk of Court.

RULE 14 - VOIR DIRE -- OPENING STATEMENTS -- CLOSING ARGUMENTS

A. **Length.** The length and conduct of voir dire examination shall not exceed one (1) hour per side without prior leave of the Court.

B. **Questioning.** Only one attorney for each party shall be allowed to question the prospective jurors on voir dire.

C. **Purpose.** The only proper purpose of voir dire is to select a panel which will fairly and impartially hear the evidence presented and render a just verdict, and to determine the grounds for any challenge for cause. Accordingly, the Court in exercising its discretion may discourage counsel from:

- (1) Asking questions of an individual juror that are susceptible of being asked collectively;
- (2) Asking questions covered by and answered in the juror questionnaire, except to explore some answer in greater depth;
- (3) Repeating questions asked and answered;
- (4) Using voir dire for the purpose of attempting to instruct the jury on the law;
- (5) Using voir dire for the purpose of arguing the case; or
- (6) Asking a juror what his verdict might be under any hypothetical situation based upon expected evidence or otherwise.

Opening statements and closing arguments (including rebuttal) shall be limited to one hour. For good cause shown, additional time may be requested and granted by the Court.

RULE 15 - ORDERS, JUDGMENTS AND DECREES

It shall be the duty of counsel obtaining any order, judgment or decree to present the same, accompanied by the Court file, in written form for the signature of the judge at the time of applying for the order, judgement or decree. Except in those instances where prior arrangements have been made with the Court or in matters of a self-evident nature, no requests for the issuance of an order will be considered by the Court unless the request is made by counsel in person.

If service of an executed order is to be made by the Court, a party presenting an unopposed or routine order shall furnish stamped envelopes addressed to the parties upon

whom the documents will be served.

When any order is made by the Court, it must immediately thereafter be presented to the Clerk by counsel. A copy of any order, the original of which is being taken out for service, shall be presented to the Clerk immediately upon the signing thereof. All orders, decrees and judgments shall be immediately filed following signature by the Court.

RULE 16 - STIPULATIONS AND AGREEMENTS

Stipulations and Agreements between the parties or their attorneys shall be made on the record and/or reduced to writing.

RULE 17 - ATTORNEYS

A. **Attorneys of Record.** Unless appearing specially on behalf of one of the attorneys of record, no attorney, unless the attorney's name appears on the pleading in the case, may participate in any proceedings in the case until the attorney's name has been entered of record.

B. **Authority as Attorney.** In case of a dispute over the authority of an attorney to represent a party to a proceeding pending before the Court, the Court will not recognize the right of the attorney to appear in such proceedings unless said attorney has an agreement in writing, signed by the client and filed in the record of the case, or unless the party has personally signed the pleadings by virtue of which the attorney appears therein.

C. **Withdrawal by Attorney.** Except as otherwise provided by law, no attorney may withdraw from any case except by consent of the client or by leave of the Court after notice has been served on the parties and opposing counsel. This provision is subject to §§37-51-403 through 37-61-405, MCA and Rule 10, UDCR.

D. **Addressing Witnesses and Attorneys.** Attorneys will not be permitted to address a witness on the stand in any manner except to propound a question to which an answer is desired. Attorneys will not be permitted to address each other during a trial or hearing except by permission of the Court.

E. **Attorney Fees.** In all civil cases in which attorney's fees are requested in the pleading, the party seeking an award of attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party shall within ten (10) days thereafter file a request for a hearing thereon. Failure to file such a request shall be deemed a waiver of right to a hearing on fees. In a contested proceeding, receipt of evidence pertaining to attorney's fees shall be deferred until a final decision or order on the merits of the case has been issued by the Court.

RULE 18 - EVIDENCE AS TO CHARACTER

Not more than two (2) witnesses will be allowed to testify as to character in any cause, civil or criminal, without leave of the Court being first asked and obtained.

RULE 19 - DECORUM

On the trial of any cause or in the presentation of any matter before the Court, only attorneys and parties engaged therein shall occupy positions before the bar, except by permission of the Court. No argument, motion or suggestion to the Court, other than a formal objection to the evidence, need be entertained unless the attorney making the same first rises in his/her place and addresses the Court.

RULE 20 - JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a judgment is entered upon a written instrument, the Clerk shall, at the time of entering judgment, note in ink over his official signature across the face of the instrument the fact of the entry of judgment and its date and attach her seal thereto, and file the said instrument in her office, which instrument shall not be removed except by order of Court. Then a proper entry of the same and of the order shall be made in the register of actions under the title of the case in which it was filed.

RULE 21 - Interrogatories

The form of interrogatories and answers thereto shall conform to the requirements of Rule 33, M.R.Civ.P.

The Court will, except in extraordinary circumstances, sustain a motion to quash all interrogatories if it appears that numerous frivolous interrogatories are asked therein. (Comment: This rule is intended to require the interrogator to custom prepare his interrogatories to the case at hand.)

RULE 22 - Transcript

Except for good cause shown, no extension of time will be granted in any case in addition to the time allowed by statute in which to prepare a transcript unless the party desiring such extension shall first make a written request to the Court reporter for a transcript of the notes of the testimony and shall file and serve a copy of his request and, at the same time, make satisfactory arrangements to pay the estimated fees therefor.

RULE 23 - Guilty Plea

Before the judge will accept any plea of guilty, the attorney for the defendant shall file with the Court a fully executed acknowledgment of waiver of rights by plea of guilty, in the form and with content consistent with the one on file with the Clerk in the general order file, copies of which shall be available from the Clerk. Copies of the executed document shall be served upon the persons designated by said form and at the time provided.

RULE 24 - Criminal Cases

A. In a criminal case, if a not-guilty plea is entered at the time of the arraignment, the case will be set for Omnibus hearing at a later date. The State or the defendant may make any motion permitted under the Montana Rules of Criminal Procedure at any time after arraignment and said motion shall be noticed for hearing by the moving party. Dispositive motions shall be made as directed in the Omnibus Hearing Order.

B. The Court hereby urges the full discovery, exploration and plea discussions be carried out between counsel prior to the Omnibus hearing.

C. In all cases in which the Court has discretion to consider a motion or allow the exercise of a defense at a later date than that designated in any statute, no party shall be deprived of the right to make such a motion to designate such defense by waiting to present the same at the time of the Omnibus hearing, as contemplated by this rule.

D. Counsel shall inform the Court fourteen (14) days prior to trial, whether the cause will proceed to a jury trial. Failure to advise the Court shall be grounds for the Court to vacate and reset the trial date. The next regularly scheduled case shall then have priority for trial.

RULE 25 - Evaluations, Therapy and Counseling in DR Cases

In a case with visitation and/or child custody issues, the judge shall consider, at the time of the scheduling conference or at any subsequent time, the advisability of requiring the parties to participate at their own cost in such evaluation, counseling, therapy and/or course of education as may appear necessary and appropriate in the circumstances relative to visitation and/or child custody issues. Any party may also request the Court to order the same at any time.

The Court Rules set forth herein shall be in full force and effect in the Twenty Second Judicial District from and after July 1, 2003 and until modified, supplemented, or deleted by further Order of the Court.

DATED this _____ day of June, 2003.

BLAIR JONES, District Judge